Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur)

REGULATION (EU) No 1052/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(d) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The establishment of a European Border Surveillance System ('EUROSUR') is necessary in order to strengthen the exchange of information and the operational cooperation between national authorities of Member States as well as with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Council Regulation (EC) No 2007/2004[(2)] ('the Agency'). EUROSUR will provide those authorities and the Agency with the infrastructure and tools needed to improve their situational awareness and reaction capability at the external borders of the Member States of the Union ('external borders') for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

(2) The practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders. EUROSUR should considerably improve the operational and technical ability of the Agency and the Member States to detect such small vessels and to improve the reaction capability of the Member States, thereby contributing to reducing the loss of lives of migrants.

(3) It is recognised in this Regulation that migratory routes are also taken by persons in need of international protection.

(4) Member States should establish national coordination centres to improve the exchange of information and the cooperation for border surveillance between them and with the Agency. It is essential for the proper functioning of EUROSUR that all national authorities with a responsibility for external border surveillance under national law cooperate via national coordination centres.

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(5) This Regulation should not hinder Member States from making their national coordination centres also responsible for coordinating the exchange of information and for cooperation with regard to the surveillance of air borders and for checks at border crossing points.

(6) The Agency should improve the exchange of information and the cooperation with other Union bodies, offices and agencies, such as the European Maritime Safety Agency and the European Union Satellite Centre, in order to make best use of information, capabilities and systems which are already available at European level, such as the European Earth monitoring programme.

(7) This Regulation forms part of the European model of integrated border management of the external borders and of the Internal Security Strategy of the European Union. EUROSUR will also contribute to the development of the Common Information Sharing Environment (CISE) for the surveillance of the maritime domain of the Union providing a wider framework for maritime situational awareness through information exchange amongst public authorities across sectors in the Union.

(8) In order to ensure that the information contained in EUROSUR is as complete and updated as possible, in particular with regard to the situation in third countries, the Agency should cooperate with the European External Action Service. For those purposes, Union delegations and offices should provide all information which may be relevant for EUROSUR.

(9) The Agency should provide the necessary assistance for the development and operation of EUROSUR and, as appropriate, for the development of CISE, including the interoperability of systems, in particular by establishing, maintaining and coordinating the EUROSUR framework.

(10) The Agency should be provided with the appropriate financial and human resources in order to adequately fulfil the additional tasks assigned to it under this Regulation.

(11) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 of the Treaty on European Union (TEU) and by the Charter of Fundamental Rights of the European Union, in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, non-refoulement, non-discrimination and the rights of the child. This Regulation should be applied by Member States and the Agency in accordance with those rights and principles.

(12) In accordance with Regulation (EC) No 2007/2004, the Fundamental Rights Officer and the Consultative Forum established by that Regulation should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency within the framework of EUROSUR.

(13) Any exchange of personal data in the European situational picture and the common pre-frontier intelligence picture should constitute an exception. It should be conducted

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on the basis of existing national and Union law and should respect their specific data protection requirements. Directive 95/46/EC of the European Parliament and of the Council[(3)], Regulation (EC) No 45/2001 of the European Parliament and of the Council[(4)] and Council Framework Decision 2008/977/JHA[(5)] are applicable in cases in which more specific instruments, such as Regulation (EC) No 2007/2004, do not provide a full data protection regime.

(14) In order to implement a gradual geographical roll-out of EUROSUR, the obligation to designate and operate national coordination centres should apply in two successive stages: first to the Member States located at the southern and eastern external borders and, at a second stage, to the remaining Member States.

(15) This Regulation includes provisions on cooperation with neighbouring third countries, because well-structured and permanent exchange of information and cooperation with those countries, in particular in the Mediterranean region, are key factors for achieving the objectives of EUROSUR. It is essential that any exchange of information and any cooperation between Member States and neighbouring third countries be carried out in full compliance with fundamental rights and in particular with the principle of non-refoulement.

(16) This Regulation includes provisions on the possibility of close cooperation with Ireland and the United Kingdom which may assist in better achieving the objectives of EUROSUR.

(17) The Agency and the Member States, when implementing this Regulation, should make the best possible use of existing capabilities in terms of human resources as well as technical equipment, both at Union and national level.

(18) The Commission should regularly assess the results of the implementation of this Regulation to determine the extent to which the objectives of EUROSUR have been achieved.

(19) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the *Schengen acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(20) This Regulation constitutes a development of the provisions of the *Schengen acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[(6)]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(21) This Regulation constitutes a development of the provisions of the *Schengen acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[(7)]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

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(22) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the *Schengen acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the *Schengen acquis*[8] which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC[9]. Norway should establish a national coordination centre in accordance with this Regulation as from 2 December 2013.

(23) As regards Switzerland, this Regulation constitutes a development of the provisions of the *Schengen acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the *Schengen acquis*[10] which fall within the area referred to in point A of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[11].

(24) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the *Schengen acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the *Schengen acquis*[12] which fall within the area referred to in point A of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[13].

(25) The implementation of this Regulation does not affect the division of competence between the Union and the Member States or the obligations of Member States under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention Relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms and other relevant international instruments.

(26) The implementation of this Regulation does not affect Regulation (EC) No 562/2006 of the European Parliament and of the Council[14] or the rules for the surveillance of sea external borders in the context of operational cooperation coordinated by the Agency.

(27) Since the objective of this Regulation, namely to establish EUROSUR, cannot be sufficiently achieved by Member States alone but can rather, by virtue of its scale and effect, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

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TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a common framework for the exchange of information and for the cooperation between Member States and the Agency in order to improve situational awareness and to increase reaction capability at the external borders of the Member States of the Union ('external borders') for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants ('EUROSUR').

Article 2

Scope

1 This Regulation shall apply to the surveillance of external land and sea borders, including the monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

2 This Regulation may also apply to the surveillance of air borders as well as to checks at border crossing points if Member States voluntarily provide such information to EUROSUR.

3 This Regulation shall not apply to any legal or administrative measure taken once the responsible authorities of a Member State have intercepted cross-border criminal activities or unauthorised crossings by persons of the external borders.

4 Member States and the Agency shall comply with fundamental rights, in particular the principles of non-refoulement and respect for human dignity and data protection requirements, when applying this Regulation. They shall give priority to the special needs of children, unaccompanied minors, victims of human trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

(a) 'Agency' means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004;

(b) 'situational awareness' means the ability to monitor, detect, identify, track and understand illegal cross-border activities in order to find reasoned grounds for reaction measures on the basis of combining new information with existing knowledge, and